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EXAMINER

SHEIKH, ASFAND M

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/896,584
Filing Date: June 29, 2001
Appellant(s): LI ET AL.

William E. Lewis
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/2/2008 appealing from the Office action mailed 9/25/2007.

(1) Real Party in Interest

A statement identifying the real party of interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after non-final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,341,271	Salvo et al.	1-2002
6,260,024	Shkedy	1-2001
5,749,081	Whiteis	5-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-4, 7-9, 13, 15-18, 21-23, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salvo et al. United States Patent 6,341,271 (hereinafter Salvo) in view of Shkedy United States Patent 6,260,024.

As per claim 1, Salvo discloses at least one broker device automatically collecting information relating to a status associated with at least one inventory item from one or more sources (col. 3, lines 52-55 and col. 4, lines 32-41), the at least one broker device automatically accessing at least one inventory price source in order to: (1) obtain information to determine one or more optimal parameters, based on the collected status information, to be used for replenishing the at least one inventory item (col. 3, lines 57-62 and col. 6, lines 7-49); and information related to an order of the inventory item from the provider of the inventory (col. 5, lines 7-10 and col. 7, lines 23-54); aggregating and deaggregating order information related to an inventory item (col. 6, lines 47-62).

Salvo fails to explicitly disclose an electronic market place wherein the electronic market place comprises an electronic trading network site; ordering a quantity of

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inventory via the electronic market place; and the at least one broker device one of aggregating and deaggregating multiple orders for the inventory as to minimize an overall purchasing cost attributable to the multiple orders.

However Shkedy discloses an electronic market place wherein the electronic market place comprises an electronic trading network site (col. 3, lines 39-56); ordering a quantity of inventory via the electronic market place (col. 5, lines 7-16); and a broker device one of aggregating and deaggregating multiple orders for the inventory as to minimize an overall purchasing cost attributable to the multiple orders (col. 4, lines 48-59 and col. 8, lines 50-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Salvo to include an electronic market place wherein the electronic market place comprises an electronic trading network site; ordering a quantity of inventory via the electronic market place; and a broker device one of aggregating and deaggregating multiple orders for the inventory as to minimize an overall purchasing cost attributable to the multiple orders as taught by Shkedy. One of ordinary skill in the art would have been motivated to combine the teachings in order to aggregate

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purchase orders to potential sellers to bid on for the best price (Shkedy, col. 3, lines 1-5 and col. 8, lines 50-54).

As per claims 2, Salvo discloses the electronic market place accessing step further comprises monitoring at least one of pricing and supply trends associated with at least one electronic marketplace on the at least one inventory item (col. 6, lines 11-19).

As per claims 3, Salvo discloses the one or more optimal parameters comprise an optimal time to acquire the at least one inventory item via the at least one electronic marketplace (col. 6, lines 41-43).

As per claims 4, Salvo discloses the one or more optimal parameters comprise an optimal quantity of the at least one inventory item to acquire via the at least one electronic marketplace (col. 6, lines 32-34 and lines 47-63).

As per claims 7, Salvo discloses the step of automatically generating an alert to an individual that an order may need to be placed for the at least one item (col. 8, lines 51-55).

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As per claims 8, Salvo discloses the step of automatically collecting information further comprises collecting usage pattern information associated with the at least one item (col. 10, lines 9-19).

As per claims 9, Salvo discloses the step of accessing the at least one electronic marketplace further comprises gather information on a market condition associated with the at least one inventory item (col. 6, lines 11-19).

As per claim 13, Salvo discloses wherein the one ore more sources comprise an embedded senor system (col. 4, lines 32-33).

As per claims 15-18 and 21-23, the Examiner notes that the limitations of claims 15-18 and 21-23 are substantially similar to those of claims 1-4, 9, and 13. Thus claims 15-18 and 21-23 are rejected under similar grounds.

As per claims 25 and 26, the Examiner notes that the limitations of claims 25 and 26 are substantially similar to those of claims 1-4, 7-9, and 13. Thus claims 25 and 26 are rejected under similar grounds.

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Claims 10 and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over Salvo et al. United States Patent 5,749,081 (hereinafter Salvo) in view of Shkedy United States Patent 6,260,024 as applied to claims 1 and 15 above, and further in view of Whiteis U.S. Pat. 5,749,081.

As per claims 10 and 24, Salvo in view of Shkedy fails to disclose the step of automatically generating a recommendation of at least one of a different brand and different type of an item to a consumer of the inventory.

However Whiteis discloses the step of automatically generating a recommendation of at least one of a different brand and different type of an item to a consumer of the inventory (col. 3, lines 12-23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Salvo in view of Shkedy to include the step of automatically generating a recommendation of at least one of a different brand and different type of an item to a consumer of the inventory as taught by Whiteis. One of ordinary skill in the art would have been motivated to combine the teachings in order to provide an accurate and subjective recommendation (Whiteis, col. 1, lines 64-67 and col. 2, lines 1-16).

(10) Response to Argument

I. Obviousness of claims 1-4, 7-9, 12, 15-18, 21-23, 25, and 26

A. Independent claims 1, 15, and 25.

The applicant argues that the teaching of Salvo and Shkedy, alone or in combination, fails to teach or suggest all the limitations of the recited claims. The examiner disagrees. The examiner notes the applicant argues that Salvo does not teach an electronic market place... The examiner agrees and notes Salvo was shown to teach at least one broker device automatically collecting information relating to a status associated with at least one inventory item from one or more sources (col. 3, lines 52-55 and col. 4, lines 32-41), the at least one broker device automatically accessing at least one inventory price source in order to: (1) obtain information to determine one or more optimal parameters, based on the collected status information, to be used for replenishing the at least one inventory item (col. 3, lines 57-62 and col. 6, lines 7-49); and information related to an order of the inventory item from the provider of the inventory (col. 5, lines 7-10 and col. 7, lines 23-54); aggregating and deaggregating order information related to an inventory item (col. 6, lines 47-62). The examiner sought to combine Shkedy to teach an electronic market place, more

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specifically, the electronic market place comprises an electronic trading network site (col. 3, lines 39-56); ordering a quantity of inventory via the electronic market place (col. 5, lines 7-16); and a broker device one of aggregating and deaggregating multiple orders for the inventory as to minimize an overall purchasing cost attributable to the multiple orders (col. 4, lines 48-59 and col. 8, lines 50-54). The examiner used the combination of both Salvo in view of Shkedy to teach the recited claim.

The examiner notes Shkedy teaches an electronic market place (see at least, background of invention and col. 4, lines 48-59). The examiner notes electronic market place is an internet based trading platform where buyers and sellers can meet and do business. The examiner notes Shkedy teaches a plurality of buyers and a plurality of sellers that communicate electronically through an intermediately in order to make purchases (see at least, col. 4, line 60 - col. 5, line 6). The examiner respectively notes the argument with respect to Salvo failing to teach an electronic marketplace is moot, because Shkedy was used to teach an electronic marketplace. Further the examiner notes that one of ordinary skill in the art could have combined Salvo's broker device for replenishing one inventory item to include the use of an electronic market place as taught

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by Shkedy which would produce a predictable result based on known elements within the art. This argument is not persuasive.

Further the applicant argues Salvo fails to teach aggregating/deaggregating feature to minimize overall purchasing cost attributable to the multiple orders. The examiner notes the rejection as written shows Salvo does teach multiple orders and notes the rejection shows that: "aggregating and deaggregating order information related to an inventory item (col. 6, lines 47-62)." The examiner notes Salvo teaches aggregating/deaggregating feature to minimize overall purchasing cost. The examiner sought to combine Shkedy to teach a broker device one of aggregating and deaggregating multiple orders for the inventory as to minimize an overall purchasing cost attributable to the multiple orders (col. 4, lines 48-59 and col. 8, lines 50-54). The examiner notes Shkedy teaches aggregating multiple purchase orders of buyers into one or more collective orders in order for sellers to analyze, automatically (see at least, col. 3, lines 1-5 and col. 4, lines 48-59) in order for sellers to bid on (e.g. thus providing a minimized cost due to the competition of lower bidding between sellers). Further the examiner notes the intermediately performs aggregation with respect to combining orders of a given set of

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items for a maximum price for a given item or for the total of the entire purchase order for a given set of items, therefore it is not a buyer's manual section of goods (see at least, col. 15, lines 42-57: three dozen black BIC at \$5.00 or three dozen black BIC at \$21.00 which includes the entire order of items). The examiner notes Shkedy teaches deaggregating based on the applicants definition of "able to take advantages of purchasing oppurtunities on smaller quantities" (e.g. three dozen black BIC at \$5.00 or three dozen black BIC at \$21.00 which includes the entire order of items). Nevertheless, the examiner notes Shkedy teaches the deaggregating of pooled orders (see at least, col. 2, lines 42-58: the examiner notes once given the best price buyers decide wheatear to purchase but its impossible to guarantee price due to the volume changing with respect the buyers remaining in the pool). The examiner notes as buyers leave the pool the pool has to be updated again with a new disaggregated price for the remainder of individuals in the pool. Further the examiner notes that one of ordinary skill in the art could have combined Salvo's aggregating and deaggregating of inventory items from vendors to include the use of aggregating and deaggregating multiple orders as taught by Shkedy which would produce a predictable result based on known elements within the art. Further the examiner has noted

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motivation was provided and relates to minimizing cost for a buyer and increasing revenue for a seller: "One of ordinary skill in the art would have been motivated to combine the teachings in order to aggregate purchase orders to potential sellers to bid on for the best price (Shkedy, col. 3, lines 1-5 and col. 8, lines 50-54)." The examiner notes one of ordinary skill in the art could have combined the elements in order to create a predictable result and motivation was provided, therefore this argument is not persuasive.

The applicant argues that Salvo fails to disclose the elements of claims 2 and 16, 3 and 17, and 4 and 18, the examiner disagrees. The examiner notes Salvo discloses **[claim 2 and 16]** the electronic market place accessing step further comprises monitoring at least one of pricing and supply trends associated with at least one electronic marketplace on the at least one inventory item (col. 6, lines 11-19), the examiner notes real-time instantaneous price information based on economic models or spot market pricing or other market information (col. 6, lines 11-28); **[claim 3 and 17]** the one or more optimal parameters comprise an optimal time to acquire the at least one inventory item via the at least one electronic marketplace (col. 6, lines 41-43), the examiner notes analyzing time for delivery from the vendor with respect to the item

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purchased and restriction on shipping of if the inventory item is perishable (col. 6, lines 28-43); **[claim 4 and 18]** the one or more optimal parameters comprise an optimal quantity of the at least one inventory item to acquire via the at least one electronic marketplace (col. 6, lines 32-34 and lines 47-63): the examiner notes total inventory at a lower purchase price. The examiner notes under the broadest reasonable interpretation Salvo teaches the claimed limitations of claims 2 and 16, 3 and 17, and 4 and 18, and notes these arguments are not persuasive. B. Obviousness of dependent claims 10 and 24.

The applicant argues that the teaching of Salvo, Shkedy, and Whiteis, alone or in combination, fails to teach or suggest all "automatically generating a recommendation at least of a different brand and a different type of item to a consumer of the inventory". The examiner disagrees.

The examiner notes Whiteis discloses automatically generating a recommendation at least of a different brand and a different type of item to a consumer of the inventory (see at least, col. 3, lines 12-23). The examiner notes the system processes the selections by searching through a list of items that are paired or linked by association (i.e., from data generated by other users based on those other user's likes) with the items chosen by the user, along with the number of times

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each of the elements of the respective pairs appear together.

The items that are most frequently linked with the user's selected items are stored in a form that can be displayed to the user as recommended items. Further the examiner notes FIG. 8, the items represent movies which would be different brands based on the different studios that have produced a given movie.

Further the examiner has noted motivation was provided: "One of ordinary skill in the art would have been motivated to combine the teachings in order to provide an accurate and subjective recommendation (Whiteis, col. 1, lines 64-67 and col. 2, lines 1-16)." The examiner notes one of ordinary skill in the art could have combined the elements in order to create a predictable result and motivation was provided, therefore this argument is not persuasive.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Asfand M Sheikh/

Examiner, Art Unit 3627

Conferees:

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627

Vincent Millin /VM/

Appeals Conference Specialist